IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2710 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIJAN DANA LAKHU

Versus

ADDITIONAL CHIEF SECRETARY (APPEALS)

Appearance:

MR JR NANAVATI for Petitioners

MR V.B.GHARANIA, AGP, for Respondent No. 1

MR DU SHAH for Respondent No. 5

MR MIHIR H JOSHI for Respondent No. 6

MR MANOJ N POPAT for Respondent No. 7, 8

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 15/02/2000

ORAL JUDGEMENT

The petitioners have challenged the revisional order dated 15th March 1991 at Annexure-C to the petition

setting aside the order dated 31st March 1989 passed by the in-charge Asst. Collector and the order dated 21.8.1989 of the Collector confirming the order of the in-charge Asst. Collector by which the land in question was allotted to the petitioners after it was declared surplus and had vested in the Government under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960.

2 The main grievance raised at the time of the arguments is that the petitioners were not heard by the revisional authority while making the impugned order. It is brought on record that on an inquiry which was made on behalf of the petitioners through their advocate, the Additional Chief Secretary, Revenue Department (Appeal) of the State of Gujarat sent a communication dated 20.8.1987 to the learned advocate for the petitioners informing him that on examining the record of the said revision application it appeared that no notice was served on any of the original respondents nos.3 to 10 i.e. the present petitioners.

3. Even from the impugned order it appears that it was only on 14.12.1989 that a request was made to the reivisional authority to implead the persons to whom the land was allotted as parties. Thereafter, the matter was listed for hearing on 15.3.1990 on which day only the advocate of the respondent had remained present. There is no reference made in the order as to whether the petitioners were served and the order shows that they were not present when the hearing proceeded.

4. The petitioners were vitally affected parties because, by the original order dated 31.3.1989 the in-charge Asst. Collector had allotted the land to them after it vested with the State Government on being declared as surplus land. Respondent no.5, according to the petitioners, had lost his battle right upto the Supreme Court against the order declaring land as surplus and he could have no say in the matter. It is also the case of the petitioners that the in-charge Asst. Collector could have validly made the impugned order in accordance with the provisions of the Code. It has been argued on behalf of the petitioners that entry was made only on 1.10.1994 in the record of rights and the petitioners had no occasion before that to know about the impugned decision. That appears to be so in view of the fact that the petitioners were never served with the notices before the hearing of the revision application took place. Even when the appeal which was filed by respondent no.5 against the order of allotment the

petitioners were never made parties and therefore the delay in presentation of this petition should not come in their way. The impugned revisional order has been made in violation of the principles of natural justice since the petitioners who are vitally interested persons were not heard. The impugned order at Annexure-C of the petition of the revisional authority is, therefore, set aside with a direction that the revisional authority shall hear the petitioners and other interested parties and take a decision on all the points that may be urged before it in accordance with law. Rule is made absolute with no order as to costs.

***

(mohd)